INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	2
Argument	4
Conclusion	5

CITATIONS

Cases:

Chinese Exclusion Case, The, 130 U. S. 581 — 4

Lem Moon Sing v. *United States*, 158 U. S. 538 — 4

United States v. *Llanos*, 206 F. 2d 852 (C. A. 9), certiorari denied, 346 U. S. 923 — 3

United States v. *Trudell*, 284 U. S. 279 — 4

Statutes:

Act of June 28, 1940, Sec. 30, Title III, Ch. 439, 54 Stat. 673, 8 U. S. C. (1946 ed.)451 — 4

Immigration and Nationality Act of 1952, Sec. 241 (a) (9), 8 U. S. C. 1251 — 2

Miscellaneous:

Philippine Independence Act of 1934, Sec. 14 (48 Stat. 456) — 2

In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 217

ALEJANDRO CARPENTERO AKA ALEJANDRO LLANOS,
PETITIONER

v.

WILLIAM A. HOGAN, OFFICER IN CHARGE, IMMIGRATION AND NATURALIZATION SERVICE, HONOLULU, HAWAII

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The *per curiam* opinion of the Court of Appeals (Pet. App. i) is not yet reported. The findings of fact and conclusions of law of the District Court (Pet. App. iii–v) are not reported.

JURISDICTION

The judgment of the Court of Appeals (Pet. App. ii) was entered on May 28, 1956. The petition for a writ of certiorari was filed on June 29, 1956. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether an alien who left Hawaii without a valid reentry permit and who was permitted to reenter as a business visitor for a limited duration may be deported for overstaying the period for which he was admitted.

STATUTE INVOLVED

Section 241 (a) of the Immigration and Nationality Act of 1952, 8 U. S. C. 1251, provides in pertinent part:

> Any alien in the United States * * * shall, upon the order of the Attorney General, be deported who
>
> * * * * *
>
> (9) was admitted as a nonimmigrant and failed to maintain the nonimmigrant status in which he was admitted or to which it was changed pursuant to section 1258 of this title, or to comply with the conditions of any such status.

STATEMENT

Petitioner was born in the Philippine Islands in 1913 and entered Hawaii in May 1930. (See Pet. App. vi–vii.) By virtue of Section 14 of the Philippine Independence Act of 1934 (48 Stat. 456) he became, upon the withdrawal of American sovereignty from the Philippine Islands in 1946, a citizen of those Islands. On July 30, 1949, he left Hawaii for the Philippines, having in his possession a reentry permit which had already expired on July 1, 1949 (Pet. App. vii). Without obtaining permission to return as a

resident alien,[1] he reentered Hawaii on January 28, 1950, as a business visitor, with permission to stay for six months, subsequently extended to February 15, 1951 (Pet. App. vi). A further application for extension was denied.

Petitioner was convicted in October, 1951, of fraudulent use of the mails in the sale of securities and sentenced to imprisonment for five years. His conviction was affirmed on appeal in September, 1953. *United States* v. *Llanos,* 206 F. 2d 852 (C. A. 9), certiorari denied, 346 U. S. 923.

While petitioner was serving his prison sentence, deportation proceedings were instituted against him in October, 1953, under Section 241 (a) (9) of the Immigration and Nationality Act of 1952 (*supra,* p. 2) on the ground that he was an alien, admitted as a nonimmigrant, who had failed to maintain the status in which he was admitted. After a hearing, the charge was sustained (Pet. App. vi–viii). The decision of the hearing officer was upheld by the Board of Immigration Appeals (Pet. App. ix–xii).

Petitioner challenged the order of deportation by this action for a declaratory judgment in the United States District Court for the District of Hawaii (R. 8) asserting *inter alia* that, although he entered as a

[1] At the original hearing, petitioner testified that he applied for a visa as a returning resident but was not given one. In a motion for rehearing before the Board of Immigration Appeals, he stated that he was informed by the consul "that a delay of about six months would be necessary within which to effect an adjustment of his residence status, but that there would be no problem about such adjustment." He further stated that, because of illness, he was unwilling to stay away from his family that long.

business visitor, he was in fact a permanent resident reentering the country and should have been treated as such (R. 6). The District Court held that petitioner had properly been ordered deported (Pet. App. iii–v; R. 13–15), and its order was affirmed on appeal (Pet. App. ii).

ARGUMENT

Petitioner's attack on the deportation order on the ground that, although he entered as a business visitor, he should be treated as a permanent resident alien is without merit. His residence in the United States gave him no absolute right to return after he voluntarily chose to depart. *The Chinese Exclusion Case*, 130 U. S. 581, 609; *United States* v. *Trudell*, 284 U. S. 279; *Lem Moon Sing* v. *United States*, 158 U. S. 538.

Petitioner elected to leave without securing a valid reentry permit. He elected to return without waiting for a visa to return as a resident alien. Without proper documentation he would not have been admitted to the United States since Section 30 of Title III of the Act of June 28, 1940, ch. 439, 54 Stat. 673 (8 U. S. C. (1946 ed.) 451), provided that any "alien seeking to enter the United States who does not present a visa (except in emergency cases defined by the Secretary of State), a reentry permit, or a border-crossing identification card shall be excluded from admission to the United States." It was petitioner's own choice to come in as a business visitor. Having voluntarily assumed that status, he cannot complain because he is being held to it. This is particularly true since, as we have noted, he has never

established any right to have been admitted in any other status.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

SIMON E. SOBELOFF,
Solicitor General.
WARREN OLNEY III,
Assistant Attorney General.
BEATRICE ROSENBERG,
Attorney.

JULY 1956.

U. S. GOVERNMENT PRINTING OFFICE: 1956